

I. INTRODUCTION

A. Purpose

The sick leave sharing program was established to prevent the economic and social harm that may affect state employees and their families when the employee is faced with a medical emergency and lacks sufficient accumulated leave to maintain income and medical insurance during the period of absence from work.

II. KENTUCKY REVISED STATUTES & REGULATIONS

A. KRS 18A.196 Definitions for KRS 18A.197.

As used in KRS 18A.197 unless the context requires otherwise:

1. “Employee” means any employee of the Commonwealth of Kentucky who is entitled to accrue sick leave and for whom accurate leave records are maintained; and
2. “State agency” or “agency” means any agency of the executive, legislative or judicial branch of the state government.

Additional Definitions from 101 KAR 2:105:

3. “Immediate family” means the employee’s spouse, mother, father, grandparent, son or daughter, or a person of similarly close relationship who has resided with the employee for at least thirty (30) days prior to application or for whom the employee is legally responsible.
4. “Medically certified illness, injury, impairment or physical or mental condition” means a disabling medical condition which has rendered or will render the employee completely incapable of performing the essential duties of his job due to the employee’s personal illness, or the medically certified necessity that the employee care for an eligible family member.

B. KRS 18A.197 Sick leave sharing program

1. The Commonwealth of Kentucky leave sharing program is created. An employee shall not qualify to donate or receive sick leave under the sick leave sharing program if the employee is not in active payroll status or has resigned, retired or been placed in unpaid leave status by a personnel action.

2. To request donated sick leave, an employee shall complete an application for Sick Leave Sharing, as well as supply a medical certificate certified by a licensed practicing physician or designee.
3. To donate sick leave, an employee shall complete a Sick Leave Donation Form.

An employee who has accrued a sick leave balance of more than seventy-five (75) hours may request that the appointing authority of the agency for which the employee works makes available for transfer a specified amount of his sick leave balance to another named employee authorized to receive leave under subsection (4) of this section. The employee may not request a transfer of an amount of leave that would result in reducing his sick leave balance to less than seventy-five (75) hours.

4. An appointing authority, with the approval of the Secretary of Personnel, may permit an employee of the agency to receive leave under this section if:
 - (a) The employee or a member of his immediate family suffers from a medically certified illness, injury, impairment, or physical or mental condition which has caused, or is likely to cause, the employee to go on leave for at least ten (10) consecutive working days with or without pay;
 - (b) Sick leave sharing shall not be authorized for mere convenience or employee preference. A licensed practicing physician or designee shall certify the employee's need for absence and use of leave;
Note: an appointing authority may require a sick leave recipient to provide an updated medical certificate attesting to the continued need for the leave after thirty (30) working days of sick leave.
 - (c) The employee has exhausted his accumulated sick leave, annual leave, and compensatory leave balances; and
 - (d) The employee has complied with administrative regulations governing the use of sick leave.
5. The appointing authority, with the approval of the Secretary of Personnel, shall determine the amount of leave, if any, which an employee within his agency may receive under subsection (4) of this section. Transfers of leave shall not exceed the amount requested by the recipient.
6. Leave may be transferred from an employee of one (1) agency to an employee within the same agency. With the approval of the Secretary of Personnel and of the appointing authorities of both agencies leave may be transferred from an employee of one (1) agency to an employee of another state agency. The Personnel Cabinet shall maintain records of leave transferred between employees and the utilization of transferred leave.

7. While an employee is on leave transferred under this section, he shall be deemed a state employee and shall receive the same treatment with respect to salary, wages and employee benefits.
8. All salary and wage payments made to an employee while on leave transferred under this section shall be made by the agency employing the person receiving the leave.
9. Any leave transferred under this section which remains unused shall be returned to the employees who transferred the leave when the appointing authority finds that the leave is no longer needed and will not be needed at a future time in connection with the illness or injury for which the leave was transferred to an employee in his agency.
10. No employee shall directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any other employee for the purpose of interfering with the employee's right to voluntarily contribute leave when authorized under this section. For the purpose of this subsection, "intimidate, threaten, or coerce" shall include, without being limited to, the promise to confer or the conferring of any benefit or effecting or threatening to effect any reprisal.
11. The Secretary of the Personnel Cabinet shall promulgate procedural administrative regulations to implement the provisions of this section.

III. GENERAL PROVISIONS

A. KDLA Policy Statement Regarding Sick Leave Sharing Program Requests

The Kentucky Department for Libraries and Archives has acknowledged and adopted the Governor's Office of Technology's statement regarding "Acceptable Use Policy of Email and Internet" technologies for internal use. In that statement, employees are advised to refrain from using these communication mediums for personal use. Therefore, sick leave sharing requests shall not be placed on any email communication (including the Weekly Window) and routed through the agency for any reason. This includes requests **from or for** employees both inside and outside the agency.

B. Ineligible Employees

Pursuant to the definition of "Employee" as provided by KRS 18A.196 (1), employees who are not entitled to earn sick leave are not eligible for participation in the sick leave sharing program. This would include per diem employees and part-time employees who work less than 100 hours per month. Employees who are on educational leave or who have officially been placed on leave without pay are also ineligible. In some instances, it is necessary to place an employee on official leave without pay on the first day of leave without pay. This is accomplished by generating a personnel action (P-1) on or near the first day of leave without pay. However, in most cases of sick leave without pay a P-1 is not generated until it becomes physically impossible for an employee to either be on paid leave and/or work over one-half (1/2) of the work days in the month. When this event occurs a P-1 is generated

with an effective date reflecting the first day of leave without pay and the employee loses eligibility to participate in the sick leave sharing program as he/she is no longer eligible to accrue sick leave. The P-1 is generated in these instances to document the leave period and to identify that month or months as ones that do not count toward months of service for the purpose of earning annual and/or sick leave.

C. Transfer of Sick Leave

Pursuant to KRS 18A.197 (2)(c) donated sick leave will be transferred to the recipient only after the recipient's accumulated leave balances have been exhausted. Once this has occurred the total amount of the approved donated sick leave will be credited to the recipient's sick leave account in accordance with KRS 18A.197 (3), which states in part that "Transfers of leave shall not exceed the amount requested by the recipient". Sick leave shall not be donated in an amount less than seven and one-half (7.5) hours. If the donated leave exceeds the requested amount, the payroll officer will advise the donor's agency of the actual amount transferred. If there is more than one donation being made at the same time and the combined donations result in an excessive amount, the excessive amount is returned to the last donor(s).

D. Unused Sick Leave

Sick leave accrued by a recipient while on sick leave with pay under this program is used before donated sick leave in accordance with KRS 18A.197 (2). Pursuant to KRS 18A.197 (7) unused donated leave shall be restored to the donors in reverse order of donation, unless the recipient provides medical evidence that continued, periodic medical treatment relating to the original condition for which leave was donated is required. If multiple donors donate sick leave to an eligible recipient, agencies shall transfer leave in chronological order of receipt of the donation forms, up to the maximum amount that has been certified to be needed by the recipient.

E. Workers' Compensation

In cases of absence due to illness or injury for which Workers' Compensation benefits are received, donated sick leave may be used to make up the difference between the Workers' Compensation payment and the employee's normal salary. If paid sick leave is used, Workers' Compensation pay benefits shall be assigned back to the state and the sick leave, from whatever origin, would be reinstated to the extent that Workers' Compensation Benefits were assigned.

F. 101 KAR 2:102. Leave Regulations

Section 5b of the leave regulations state that "At the termination of sick leave, the appointing authority shall return the employee to his former position."

G. 101 KAR 2:105. Sick Leave Sharing Procedures

1. The ten (10) consecutive days of leave required for digibility may be leave with or without pay.
2. Sick leave sharing shall not be authorized for mere convenience or employee preference.
3. Sick leave shall not be donated in an amount less than seven and one-half (7.5) hours.

IV. PROCEDURES

A. Sick Leave Sharing Forms

In order to insure compliance with KRS 18A.197, sick leave sharing forms have been developed to facilitate the requests of both the recipient and donor of sick leave. These forms can be obtained from the agency personnel/payroll office.

B. Application Process

1. The recipient completes his/her part of the sick leave sharing form, identifying the amount of sick leave needed and provides a reason why transferred leave is needed. The reason should include a brief description of the nature, severity, and anticipated duration of the medical emergency. It should also provide an explanation as to why the employee has failed to accumulate a sufficient leave balance to cover the period of absence required.
2. The recipient signs his/her sick leave sharing form and attaches a certificate from a licensed practicing physician or designee which attests to the need for absence and which confirms the anticipated duration of the medical emergency. If a recipient is incapacitated, an immediate family member may complete and sign the sick leave sharing form on behalf of the recipient. In this event the family member would sign the recipient's name and then indicate "by" and then identify his/her relationship to the recipient and provide his/her own signature; for example, John Doe, by his wife, Jane Doe.
3. The recipient's sick leave sharing form is then submitted to the agency personnel/payroll office. Whenever possible, it should be submitted before the recipient's leave balances have been exhausted. Upon receipt, the personnel/payroll office will review it for completeness and confirm eligibility. It is then forwarded to the State Librarian/Commissioner's Office for consideration. If approved, a file is created in the payroll office and a copy of the approved form is sent to Personnel Processing in the Personnel Cabinet. Donated sick leave shall not be utilized retroactively except to cover the period between the date the request was submitted to the employee's

supervisor or agency representative and the date of approval by the appointing authority.

4. The donor completes the sick leave sharing form identifying the number of sick leave hours he wishes to donate and submits the form to his/her payroll officer. The payroll officer reviews it and verifies that the amount of donated sick leave will not reduce the donor's sick leave balance below seventy-five (75) hours. Upon verification, the payroll officer obtains the appointing authority's approval and sends a copy of the approved form to the recipient's payroll officer and to Personnel Processing in the Personnel Cabinet. Donated sick leave shall be used in the order in which it is donated, and on consecutive days.
5. If the recipient's leave balances have already been exhausted, the recipient's payroll officer would immediately transfer the donated sick leave to the recipient upon receipt of the donor form. If the recipient's leave balances had not yet been exhausted, the payroll officer would hold all donations until this event occurs and at that time all donations, up to that amount requested by the recipient, would be transferred to the recipient. The sick leave sharing recipient shall also be responsible for monitoring the amount of sick leave donated and used. Leave that an employee accrues while receiving donated sick leave shall be used before donated sick leave. **Note:** On the first pay period of the month (1-15) the employee should note on the timesheet 7.5 sick leave used and the annual time accrued should be used as leave before denoting sick leave sharing.
6. Following the transfer of the donated sick leave, the recipient's payroll officer would notify the donor's payroll officer by memorandum of the exact amount transferred and provide for an adjustment in the event that the total donations exceeded the amount requested. The recipient's payroll officer would provide a copy of this memorandum to Personnel Processing and the donor's payroll officer would forward a copy to the donor(s).
7. Upon the recipient's return to work the payroll officer will verify whether or not an unused balance of donated sick leave exists and, if so, the donor(s) payroll officer would be notified by memorandum of the amount of sick leave which is to be returned to donor(s). The recipient's payroll officer would provide a copy of this memorandum to Personnel Processing and the donor's payroll officer would forward a copy to the donor(s).

C. Questions and Answers

1. Question - Will the recipient accrue leave of his/her own while on donated sick leave?

Answer - YES! The recipient's leave must be used before a donor's time can be used.

2. Question - Will the recipient have to reapply when he/she accrues leave?

Answer - NO! The original application will remain in effect.

3. Question - Does the donor have to be an active employee?

Answer - YES!

4. Question - Does maternity leave qualify under this regulation?

Answer - YES!

5. Question - Is an employee who can only work a fraction of the day due to a medical condition eligible to have leave donated?

Answer - NO! A doctor must certify that the employee cannot perform his/her duties for a minimum of 10 consecutive days.

6. Question - Can sick leave be donated retroactively?

Answer - NO! Donated sick leave can only be retroactive to the first day of the pay period in which it is received.

7. Question - Can an employee retain annual and/or sick leave under this program?

Answer - NO! The employee is not eligible to receive donated sick leave until all his leave balances have been exhausted.

8. Question - Are LRC and AOC participating agencies?

Answer - YES! Both organizations can donate or accept leave from Executive Branch employees.

9. Question - Is the donation revocable?

Answer - NO! Once the donor's application is accepted the donation cannot be withdrawn, unless the donor becomes ineligible.